

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

United States of America :
 :
 :
 vs : 4:17-CR-0262
 :
 :
 Jared Marc Brown :

BEFORE: HONORABLE MATTHEW W. BRANN
PLACE: Williamsport, Pennsylvania
PROCEEDINGS: Change of Plea/Sentencing
DATE: Tuesday, June 11, 2019

APPEARANCES:

For the United States: James T. Clancy, Esquire
U.S. ATTORNEY'S OFFICE
228 Walnut Street, Suite 220
Harrisburg, PA 17108

For the Defendant: Gerald A. Lord, Esquire
FEDERAL PUBLIC DEFENDER'S OFFICE
330 Pine Street, Suite 302
Williamsport, PA 17701

1 (10:20 a.m., convene.)

2 THE COURT: The first matter before the Court today is
3 that of the United States of America against Jared Marc Brown,
4 docketed in this court at criminal number 4:17-CR-00262.

5 The Court notes the presence of Assistant United
6 States Attorney James T. Clancy, counsel for the defense,
7 Assistant Federal Public Defender Gerald A. Lord, as well as
8 the defendant, Jared Marc Brown.

9 Mr. Brown, good morning to you, sir.

10 THE DEFENDANT: Good morning.

11 THE COURT: Counsel, is this matter before the Court
12 today for a change of plea to guilty and then to proceed into
13 sentencing? Mr. Clancy.

14 MR. CLANCY: That is correct, Your Honor.

15 THE COURT: Mr. Lord, do you agree?

16 MR. LORD: I do, Your Honor.

17 THE COURT: Very well. I note then for the record
18 that I'm addressing this defendant personally in open court and
19 pursuant to Federal Rule of Criminal Procedure 11(b)(1).

20 Mr. Brown, before I can accept your plea of guilty
21 with respect to the charge that has been brought against you in
22 this case charges, it is necessary for me to establish under
23 Federal Rule of Criminal Procedure 11 that you fully and
24 completely understand your rights under the law and that you
25 understand the consequences of a guilty plea.

1 Do you understand that, sir?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You are going to be placed under oath
4 momentarily. I'm going to ask certain questions of you. You
5 should be advised if you give me any false answers while under
6 oath that you could be subject to further prosecution for
7 perjury or for making false statements to the Court.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: If you do not hear or you do not
11 understand one of my questions, please interrupt me, and I will
12 repeat or rephrase my question. And therefore, if you respond
13 to one of my questions, I am going to assume that you have both
14 heard and understood it.

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You may speak to your attorney, Mr. Lord,
18 at any time. You may speak to Mr. Lord privately, if you wish
19 to do so. Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mrs. Rhinehart, administer the oath now to
22 this defendant, please.

23 THE COURTROOM DEPUTY: Would you please stand and
24 raise your right hand?

25 (The defendant was sworn.)

1 THE DEFENDANT: I do.

2 THE COURTROOM DEPUTY: Please state your full name.

3 THE DEFENDANT: Jared Marc Brown.

4 THE COURTROOM DEPUTY: Thank you. You may be seated.

5 THE COURT: Mr. Brown, you've been placed under oath.

6 I'm now going to ask certain questions of you in what is called
7 a plea colloquy. The questions are not meant to insult your
8 intelligence. They are merely basic questions that I, and all
9 other federal district judges, must ask in order to comply with
10 the federal rules.

11 State your name again for the record, please.

12 THE DEFENDANT: Jared Marc Brown.

13 THE COURT: Can you read, write and converse in the
14 English language?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: How old are you, sir?

17 THE DEFENDANT: Twenty-two.

18 THE COURT: What is your educational background?

19 THE DEFENDANT: I never finished high school.

20 THE COURT: What grade did you get to, sir?

21 THE DEFENDANT: Tenth.

22 THE COURT: Where were you born?

23 THE DEFENDANT: Buffalo, New York.

24 THE COURT: You're a citizen then of the United
25 States?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Have you received a copy of the
3 indictment; that is to say, the written charges made against
4 you in this case by the Government of the United States?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Have you had sufficient time to review
7 this charge against you with your attorney, Mr. Lord?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And have you fully discussed that charge
10 and the case in general with Mr. Lord?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand the charge that is made
13 against you by the Government?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you wish to have that charge read to
16 you now in open court?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Has Mr. Lord explained your trial rights
19 and defenses that you could bring to this charge?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You are fully satisfied with the legal
22 representation you've received to date from Mr. Lord?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Mr. Brown, are you currently taking any
25 prescription medication?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: What is that?

3 THE DEFENDANT: On Olanzapine and lithium.

4 THE COURT: And what effect do these medications have
5 on your thinking, your understanding or your judgment?

6 THE DEFENDANT: They don't have no effect.

7 THE COURT: Have you had any drugs or alcohol either
8 today or yesterday?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Have you been treated recently for drug
11 addiction?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Have you been treated recently for alcohol
14 addiction?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Have you been treated recently for mental
17 illness?

18 (Off-the-record discussion held between the
19 defendant and defense counsel.)

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And did that treatment result in the
22 prescription for the medications that you previously discussed
23 with me?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Would you describe then your treatment --

1 your recent treatment for mental illness?

2 THE DEFENDANT: What did you say, Your Honor?

3 THE COURT: Would you describe for me then your recent
4 treatment for mental illness?

5 Mr. Lord, maybe you can assist.

6 MR. LORD: Yes, Your Honor. My client underwent, as
7 the Court knows, several psychological evaluations. He had
8 been subject to some evaluations earlier in life. So in a
9 broad context, that's the extent of his treatment for mental
10 illness.

11 THE COURT: Very good. Thank you.

12 Mr. Brown, do you understand what is happening today
13 and why you are appearing before me in federal district court?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Are you able to concentrate on what I am
16 saying to you today?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Very well. I'm satisfied this defendant
19 is currently competent to plead guilty.

20 Mr. Brown, if you were to persist in your plea of not
21 guilty, you would have the right to a jury trial. Let me
22 explain that right to you.

23 You are entitled to a jury trial in which you, through
24 your attorney, Mr. Lord, would select a jury consisting
25 typically of 12, but never fewer than six, persons to sit as a

1 jury to hear the facts of this case.

2 At trial, the Government of the United States has the
3 burden of proving each and every element of the crime charged
4 against you beyond a reasonable doubt.

5 You are presumed innocent during these proceedings
6 unless and until the Government proves the charge against you
7 beyond a reasonable doubt.

8 At trial, you would have the right, again through your
9 attorney, Mr. Lord, to confront witnesses against you by what
10 is called cross-examination. At trial, you would have the
11 right to subpoena witnesses and evidence in support of your
12 plea of not guilty. At trial, you would have the right to, but
13 would not be required to, testify on your own behalf. If you
14 decide not to testify or set forth any evidence, that decision
15 cannot be used against you.

16 To find you guilty, the verdict must be unanimous;
17 that is to say, all jurors would have to agree. If you give up
18 your right to a jury trial by pleading guilty before the Court
19 this morning, you are giving up your right to present any
20 defenses you may have and your right to appeal any pretrial
21 matters.

22 Having explained that to you, sir, do you understand
23 your right to a jury trial?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand further that you have a

1 right to persist with your not guilty plea and to proceed with
2 a jury trial in this matter?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that you have a right to
5 be represented by a lawyer at all stages of this proceeding,
6 including trial, should you choose not to plead guilty today?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand further that by pleading
9 guilty, you will waive your right to a jury trial?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you wish to waive that right and
12 continue with the guilty plea today?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Very well. Mr. Brown, I understand that
15 you are pleading guilty to count one of the indictment, which
16 charges you with threatening the life of the President of the
17 United States, a violation of Title 18 of the United States
18 Code at Section 871.

19 Do you understand, sir, that the statutory maximum
20 term of imprisonment under the United States Code for that
21 offense is five years, together with a fine of \$250,000, a
22 maximum term of supervised release of three years, the costs of
23 prosecution, denial of certain federal benefits, and a \$100
24 special assessment?

25 Do you understand that, Mr. Brown?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand that the term of
3 supervised release is served after any term of imprisonment
4 imposed?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that if you violate the
7 terms of supervised release you may be required then to return
8 to prison?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you understand that this Court has the
11 authority to order restitution, if applicable, to be paid to
12 any victims of this crime?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand that this Court is
15 obligated to impose a \$100 special assessment in this case?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand that there are
18 sentencing guidelines that I must consider in passing sentence
19 on you?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you and Mr. Lord discussed the
22 sentencing guidelines that might apply in this case?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Mr. Lord, based upon what you know about
25 the case today, which is everything really, what did you

1 estimate that guideline to be?

2 MR. LORD: Your Honor, I estimated the base offense
3 level to be 12. My client has a criminal history category of
4 six. So he begins with a level of 30 to 37 months. And if he
5 receives credit for acceptance of responsibility, that lowers
6 to 24 to 30 months.

7 THE COURT: Mr. Clancy, do you agree with that
8 estimated guideline range, again based upon what you and your
9 office know about the case today, which is everything?

10 MR. CLANCY: Your Honor, based on what I know about
11 the case today, I disagree with Mr. Lord. I know Mr. Vought
12 from the probation office has prepared a guidelines estimate
13 that puts the guideline range at 57 to 60 months, capped at the
14 statutory maximum 60 months. The Government agrees with that
15 calculation.

16 THE COURT: Thank you. Mr. Brown, if I determine that
17 your guideline sentence is different from what has been
18 estimated to you today, you cannot withdraw your guilty plea.

19 Do you understand that, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand, however, that your
22 guideline sentence cannot exceed the statutory maximum sentence
23 of five years of imprisonment?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: A prior criminal conviction may increase

1 your guideline range. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Have you ever before been on supervision
4 for a crime such as probation, parole, supervised release or
5 ARD?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: If you were on supervision when you
8 committed this present offense, your plea of guilty today would
9 be an admission that you violated that supervision.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Brown, a United States probation
13 officer within this federal district must conduct a
14 pre-sentence investigation and submit a report to the Court
15 before it imposes sentence, unless the Court finds that the
16 information in the record enables it to meaningfully exercise
17 its sentencing authority under Title 18 of the United States
18 Code at Section 3553, and the Court explains its findings on
19 the record.

20 Given the information in the record, I will not order
21 a full pre-sentence investigation and report to be done in your
22 case. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand further that your
25 attorney, Mr. Lord, and counsel for the Government can agree on

1 facts and make recommendations, motions and requests at the
2 time of sentencing, but that I do not have to do what they ask
3 me to do?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Your plea of guilty will be binding on you
6 whether or not I agree with their facts and recommendations at
7 the time of sentencing. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand that the guideline
10 sentencing range is advisory only, that after your guideline
11 range has been determined, the Court has the authority to
12 impose a sentence that is more severe or less severe than the
13 sentence prescribed by the guidelines?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand that there is no parole
16 in the federal system, and you must serve the entire term of
17 imprisonment to which you are sentenced?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you further understand that no one can
20 guarantee you what sentence you will receive from me?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand that you may be able to
23 appeal your sentence to a higher federal court, the Court of
24 Appeals, that could modify or set aside the sentence or order
25 me to resentence you?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: The Government may also be able to appeal
3 your sentence. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You stated previously that you are a
6 citizen of the United States, that you were born in Buffalo,
7 New York. Do I have that right?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: My understanding is that there is no plea
10 agreement in this matter. So I have a few questions for
11 counsel and then for you, Mr. Brown.

12 Mr. Clancy, have there been one or more formal plea
13 offers extended by the Government in this case?

14 MR. CLANCY: Yes, Your Honor.

15 THE COURT: And can you describe for the Court the
16 terms of any formal offers?

17 MR. CLANCY: I can, Your Honor. There was one formal
18 offer. That offer resulted from a long discussion between me
19 and Mr. Lord, and that offer anticipated a plea to the charge
20 and credit for acceptance of responsibility and a
21 recommendation of a time served sentence.

22 That offer was signed by Mr. Brown and Mr. Lord. It
23 was sent through the approval process in my office, and it was
24 rejected, largely in part because during the plea negotiation
25 process, Mr. Brown engaged in conduct that led to another

1 federal charge in the Western District of New York, having to
2 do with threatening the judge who sentenced him in his prior
3 case, the judge's family and the Secret Service agent
4 investigating the case.

5 So that was the one offer, Your Honor. It was
6 rejected when signed. That is where we stand.

7 THE COURT: Good. Thank you.

8 Mr. Lord, do you agree that there was a formal plea
9 offer made in this case?

10 MR. LORD: I do, Your Honor.

11 THE COURT: Mr. Lord, do you agree with the proposed
12 terms that Mr. Clancy set forth and apparently were
13 memorialized?

14 MR. LORD: Yes. In addition to that, there was a
15 waiver of appeal, Your Honor.

16 THE COURT: Thank you. Mr. Lord, did you communicate
17 that offer with those proposed terms to Mr. Brown?

18 MR. LORD: I did.

19 THE COURT: From what Mr. Clancy has indicated to the
20 Court, Mr. Brown accepted that offer.

21 MR. LORD: He did. He signed it on March 29, mailed
22 it back to me, and I signed it and submitted it to the U.S.
23 Attorney's Office.

24 THE COURT: And Mr. Clancy, do you agree that Mr. Lord
25 informed you that Mr. Brown had rejected -- excuse me -- had

1 accepted that offer?

2 MR. CLANCY: I certainly do, Your Honor.

3 THE COURT: Mr. Brown, do you agree that Mr. Lord
4 informed you of the formal offers extended to you by the
5 Government through Mr. Clancy, who is the assistant United
6 States attorney prosecuting this case?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And Mr. Brown, do you agree with your
9 attorney as to the proposed terms of the offer that was recited
10 momentarily to the Court by Mr. Clancy?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you agree that you accepted that
13 offer?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And your understanding, further, is that
16 the Government later simply withdrew that offer for the reasons
17 that Mr. Clancy has set forth to the Court this morning?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Thank you. And before accepting or
20 rejecting the offer, did you discuss the offer with your
21 attorney, Mr. Lord?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And were you satisfied with the legal
24 advice provided to you at that time by Mr. Lord?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Thank you. Would you agree further,
2 Mr. Brown, that your decision to reject the offer or accept the
3 offer, in this case accept it, was an informed and an
4 intelligent decision made of your own free will after
5 considering the legal advice of Mr. Lord?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Mr. Lord, are you satisfied that your
8 client's decision to accept the plea offer was an informed and
9 intelligent decision, made of his own free will after
10 considering the legal advice that you provided him?

11 MR. LORD: Yes, I am, Your Honor.

12 THE COURT: Thank you.

13 Mr. Clancy, are you satisfied that Mr. Brown's
14 decision to accept the plea offer, as extended at that time,
15 was an informed and intelligent decision made of Mr. Brown's
16 own free will after considering the legal advice extended to
17 him by his counsel?

18 MR. CLANCY: I do, Your Honor.

19 THE COURT: Thank you.

20 Mr. Brown, did anyone promise or offer you anything
21 other than the written plea agreement that has been discussed
22 with the Court in order to get you to plead guilty today?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Have there been any threats made against
25 you or made against any member of your family that caused you

1 or forced you to plead guilty before the Court today?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Are you pleading guilty then of your own
4 free will?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand, sir, that you are
7 entering a plea of guilty to a felony which may deprive you of
8 valuable civil rights, such as the right to vote, the right to
9 hold public office, the right to serve on a jury, the right to
10 possess a firearm or the right to hold a professional license?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand that as a consequence of
13 your guilty plea, you may be required then to submit to DNA
14 sampling?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Thank you.

17 Mr. Clancy, would you place on the record now the
18 facts that you and your office would present in order to
19 support the charge made against Mr. Brown?

20 MR. CLANCY: Certainly, Your Honor.

21 If this matter proceeded to trial, the United States
22 would be prepared to prove that in June of 2017 the defendant
23 was an inmate at the United States Penitentiary at Allenwood,
24 Pennsylvania, within the Middle District of Pennsylvania,
25 serving a supervised release revocation sentence imposed in the

1 Western District of New York related to a conviction for making
2 a threat to kill the President of the United States in 2015.

3 On or about June 14, 2017, the defendant sent an
4 e-mail within the prison system stating his intent to blow up
5 the prison and kill both Donald Trump and Barack Obama.

6 A search of Mr. Brown's cell revealed a note in which
7 he stated he would kill both Trump and Obama, as well as the
8 Secret Service agent involved in his New York case.

9 The matter was referred to Secret Service through the
10 Federal Bureau of Investigation. The defendant was interviewed
11 by Secret Service agents and admitted making the threats. He
12 backed off the threat against President Obama, because he was
13 no longer in office. He would not, however, retract the threat
14 against President Trump or the Secret Service agent.

15 That, in essence, would be the Government's proof to
16 support the charge against the defendant, Your Honor.

17 THE COURT: Very good, sir. Thank you.

18 Mr. Brown, do you fully admit to those facts as
19 recited now to the Court by the Assistant United States
20 Attorney?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Mr. Brown, with all of the information I
23 have reviewed with you thus far, is it still your desire to
24 plead guilty before the Court today?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Are you pleading guilty because you are,
2 in fact, guilty?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Are you willing to waive your right to a
5 trial by a jury of your peers?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Mr. Brown, do you now plead guilty?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Very well. The Court makes the following
10 finding; that the defendant, Jared Marc Brown, is fully alert,
11 competent and capable of entering of an informed plea. This
12 plea is a knowing and a voluntary plea supported by an
13 independent basis in fact, containing each of the essential
14 elements of the offense pled to.

15 Mr. Brown's plea is, therefore, accepted and he is now
16 adjudged guilty of this offense.

17 For the record, I note the guilty plea form has been
18 signed by the defendant and is accepted now by the Court.

19 The Court will enter an order now memorializing these
20 findings. The Court finds that this defendant is acting
21 voluntarily and not as a result of force or threats or
22 promises, that he understands his rights and he understands the
23 consequences of his plea, and he voluntarily waives his right
24 to trial.

25 The Court finds that the plea has a basis in fact.

1 The Court accepts the plea of guilty to count one of the
2 indictment.

3 Counsel, are there any other matters regarding
4 Mr. Brown's change of plea that should be dealt with now before
5 we move on to sentencing? Mr. Clancy?

6 MR. CLANCY: No, Your Honor.

7 THE COURT: Mr. Lord?

8 MR. LORD: No, Your Honor.

9 THE COURT: Thank you.

10 We'll proceed now to sentencing in this matter.

11 Mr. Brown, your counsel, Mr. Lord, filed a motion to
12 waive a pre-sentence investigation and report and proceed
13 directly to sentencing during this hearing today.

14 Do you still wish to proceed directly to sentencing at
15 this hearing?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: In accordance with Federal Rule of
18 Criminal Procedure 32(c)(1)(A)(2), I find that the information
19 in the record enables the Court to meaningfully exercise its
20 sentencing authority under Title 18 of the United States Code
21 at Section 3553.

22 On August 31, 2016, the probation office of the United
23 States District Court for the Western District of New York
24 conducted a pre-sentence investigation and prepared a report
25 which was disseminated to Mr. Brown and his then counsel.

1 Mr. Brown was later sentenced to 15 months of imprisonment by
2 the Western District of New York for making threats against the
3 President, in violation of Title 18 of the United States Code
4 at Section 871(a).

5 Both Mr. Brown and Mr. Lord and Mr. Clancy have
6 represented to the Court that they have a copy of that
7 presentence report.

8 In preparing Mr. Brown for sentencing in the instant
9 matter, the probation officer for the Middle District of
10 Pennsylvania has provided both parties and the Court a modified
11 pre-sentence report that incorporates information set forth in
12 the Western District of New York pre-sentence report and
13 provides additional information not contained therein,
14 including information regarding the instant offense conduct,
15 updates to Mr. Brown's criminal record and his guidelines
16 calculation.

17 His modified pre-sentence report, together with the
18 pre-sentence report from the Western District of New York,
19 provides the Court with sufficient information, pursuant to
20 Federal Rule of Criminal Procedure 32 and Title 18 of the
21 United States Code at Section 3553, to impose sentence, and
22 accordingly, renders the preparation of a full pre-sentence
23 investigation report unnecessary.

24 Therefore, we will proceed directly now to sentencing.

25 Mr. Brown, I have the unfortunate task of passing

1 sentence on you in this criminal matter today. I note for the
2 record that I have just accepted your guilty plea to count one
3 of the indictment, threatening the life of the President of the
4 United States, a violation of Title 18 of the United States
5 Code at Section 871.

6 Mr. Clancy, have you had an opportunity to review the
7 modified pre-sentence report that I have referenced?

8 MR. CLANCY: I have, Your Honor.

9 THE COURT: Are there any unresolved objections from
10 the Government's perspective?

11 MR. CLANCY: No, Your Honor.

12 THE COURT: Mr. Lord, likewise, have you had an
13 opportunity to review the modified pre-sentence report?

14 MR. LORD: I have Your Honor.

15 THE COURT: Are there any unresolved objections from
16 the defense perspective?

17 MR. LORD: Well, just as the Court heard earlier, I
18 don't believe that there's a plus six attached to the guideline
19 U.S.S.G. A1.2. I'll give the Court my reasons when the time
20 comes.

21 THE COURT: Yes. And that will be momentarily.

22 MR. LORD: Yes, Your Honor.

23 THE COURT: But you agree there are some unresolved
24 objections that should be addressed before imposing sentence?

25 MR. LORD: Yes, Your Honor.

1 THE COURT: Mr. Brown, have you had an opportunity,
2 with Mr. Lord's assistance, to review the modified pre-sentence
3 report?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you agree with your attorney that there
6 are some unresolved objections that he will be addressing with
7 the Court momentarily?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Thank you.

10 Before I proceed to address those objections, let me
11 take a moment, Mr. Brown, to explain what is going to happen in
12 this courtroom today.

13 In accordance with two cases; the first entitled Gall
14 against the United States, and the second entitled Nelson
15 against the United States, this Court is required to engage in
16 a three-step process at this sentencing hearing.

17 First, I will calculate the advisory guideline range
18 based on the sentencing guidelines promulgated by the United
19 States Sentencing Commission.

20 Second, I will formally rule on any motions for
21 departure, if there are any, and state the impact, if any, of
22 any such ruling on the guideline calculation.

23 And third, I'm required to exercise discretion and
24 consider the factors set forth at Title 18 of the United States
25 Code at Section 3553(a) in fixing a sentence, which may vary

1 from the advisory guideline range.

2 Following the decision of the United States Supreme
3 Court in the matter of United States against Booker, the
4 sentencing guidelines are to be treated as advisory rather than
5 as mandatory. Therefore, although I'm required to start with
6 the guidelines as an initial benchmark, I will not presume that
7 the guidelines range is reasonable. Rather, I will make an
8 individualized assessment based upon the facts presented.

9 So if I understand it correctly, Mr. Lord, you have
10 really two objections to the modified pre-sentence report.
11 First, you are going to object to the six-level victim-related
12 enhancement, which has bumped Mr. Brown's offense level from 12
13 to 18; and second, you wish to argue that Mr. Brown deserves a
14 two-point reduction for acceptance of responsibility, which the
15 probation officer for this district determined that Mr. Brown
16 was entitled to no reduction.

17 Would you care to make argument?

18 MR. LORD: Yes. Thank you. May it please the Court.
19 I'll address the enhancement under 3A1.2 first, Your Honor.

20 Pursuant to the United States Sentencing Guideline
21 2A6.1, the base offense level for this particular offense is
22 12. And in the commentary, statutory provisions, there are a
23 number of offenses laid out there, starting from 18 U.S.C.
24 32(c) and going all the way to 49 U.S.C. 46507.

25 I had occasion to look over those particular statutes

1 before today's proceeding, Your Honor, and I did some research
2 in connection with the charge under 18 U.S.C., Section 871.
3 And I have had difficulty -- I have had difficulty aligning the
4 guideline under 3A1.2 with this particular offense, and I'll
5 tell the Court the reasons why.

6 The first reason is, 3A1.2, official victim, states in
7 (a) and (b) that if the victim was a government officer or
8 employee, or former officer or employee, or a member of the
9 immediate family, and the offense of conviction was motivated
10 by such status, increase by three levels.

11 Significantly, if both (a)(1) and (a)(2) apply, then
12 there's an increase by six levels. And obviously the President
13 of the United States could be viewed as an official victim.
14 But I note some differences between this particular charge and
15 most of the other ones under the commentary. These charges
16 range from threat to destroy aircraft to mailing threatening
17 communications from a foreign country, threatening foreign
18 officials and conveying false information related to terrorist
19 attacks.

20 The interesting thing about most of these offenses is
21 they also come under the sentencing guideline having to do with
22 the same one that's 871.

23 However, if you look at these particular charges, most
24 of the ones in the commentary, there's an addition of levels,
25 because not only did you commit that offense but then again,

1 you did it against an official victim. And therefore, that's a
2 basis to increase the base offense level by a certain amount of
3 points, three or six.

4 The charge to which my client pleaded guilty, 18
5 U.S.C., Section 871, has both of those conditions built into it
6 so that I can easily make the argument that every time somebody
7 is charged with a violation of 18 U.S.C. 871, there's an
8 automatic increase by six levels, because it's always the
9 President and it's always sentenced because of that status.

10 So I'm wondering why the Sentencing Commission would
11 not have put in 2A6.1 a base offense level of 12, except if
12 it's an official victim that is the President of the United
13 States; in that case it's an 18.

14 So I can't believe that the Sentencing Commission
15 envisioned that every time someone was charged with a violation
16 of 18 U.S.C., 871 that they automatically get a six-level
17 increase. That could not have been their intent.

18 So that's one of the reasons I have a problem with
19 this victim-related adjustment under 3A1.2. I had difficulty
20 finding any case law in which the plus six was applied. And
21 there may be case law. I just didn't see it.

22 I did find a case from the Seventh Circuit from 1990
23 in which the defendant was charged with a violation of 18
24 U.S.C., Section 871. But what they did was they said he
25 wasn't -- the President didn't come under (a) -- he came under

1 (a)(1) or (2), he came under (a)(5), which states, "If the
2 official victim is an exceptionally high-level official, such
3 as the President or the Vice-President, an upward departure may
4 be warranted due to the potential disruption of the
5 governmental function."

6 So in that case, even though 3A1.2(a) and (b) were
7 still available, it was under (a)(5) that the Court imposed an
8 upward departure in that case.

9 And they did mention in that case that there's a
10 President, who's an official, whereas the language in (a) and
11 (b) have to do with officers or employees. I tried to do some
12 research on how do you define a government officer or employee,
13 and I was unable to locate an answer about whether the
14 President is an employee or an officer.

15 THE COURT: He is described as the chief executive
16 officer, isn't he?

17 MR. LORD: The chief executive officer, yes. But as
18 far as the interpretation of the Seventh Circuit case and the
19 fact that they applied (a)(5) and not (a)(1) or (2), I'm
20 wondering whether, as an official victim, he's a high-level
21 official as opposed to an officer or employee, whether that
22 should apply.

23 Again, going back to my original statement about this
24 and the reasoning of the Sentencing Commission, I find it hard
25 to believe that in a case of this nature, where the status of

1 the person who the victim and the fact that it is done because
2 of that status is built into the statute, why is he getting the
3 12 under 2A6.1 as an automatic six under 3A1.2.

4 I don't have a copy of the sentencing guidelines from
5 1990 but --

6 THE COURT: There's a reasonable bet that he does.

7 MR. LORD: The case I was referencing, the Seventh
8 Circuit case, is United States verses McKleb, M-c-K-L-E-B, and
9 the guidelines were a little bit different back then. But it
10 acknowledged that the defendant pleaded guilty to 18 U.S.C.,
11 Section 871, and there were actually six levels added in that
12 case because there was an intent to carry out the threat that
13 was found.

14 But there was also a final calculation that included
15 an upward departure of three levels because the object of the
16 threat was the President. And they noted in there, as written
17 back then, that the guideline acknowledges the absence of
18 certain high-official levels, notably the President and
19 Vice-President, from this adjustment.

20 The language written back then may not be relevant for
21 the purposes of the way it was written today. But I just found
22 it interesting that I did not -- I'm not saying there are not
23 any cases out there, I just found it interesting that there are
24 no cases at the Third Circuit level, or the United States
25 Supreme Court level, where there was a charge of 18 U.S.C.,

1 Section 871 and there was a six-level enhancement under 3A1.2.

2 So I would take the position, Your Honor, that the
3 base offense level should remain at 12 and that there should
4 not be a six-level increase under 3A1.2 (a) and (b). I would
5 like the Court to consider that particular argument here today.
6 So that's my argument for the six-level increase, Your Honor.

7 THE COURT: That's fine. Do you want to address, at
8 the same time, the two-point reduction for acceptance of
9 responsibility?

10 MR. LORD: Thank you, Your Honor. Yes, I will.

11 THE COURT: Mr. Vought, from the probation office, has
12 determined that there is no reduction. And I'll have
13 Mr. Clancy respond to both. Do you want to address that, as
14 well?

15 MR. LORD: Thank you, Your Honor. I will. So, under
16 U.S.S.G. 3E1.1, if a defendant clearly demonstrates acceptance
17 of responsibility, the offense level is increased by two
18 levels. In the commentary, application notes 1(a) through (h),
19 the Sentencing Commission lists various factors the Court can
20 consider in determining whether or not the defendant has
21 accepted responsibility.

22 Noting that, as it says in application note five, the
23 sentencing judge is in a unique position to evaluate a
24 defendant's acceptance of responsibility. For this reason, the
25 determination of the sentencing judge is entitled to great

1 deference on review.

2 Now, some of these factors under application note one
3 are really not applicable in this case, because my client
4 wasn't out on pretrial release, and there were not any
5 voluntary surrender problems or voluntary payment problems.

6 Yes, voluntary termination or withdrawal from criminal
7 conduct or associations is mentioned in there as one factor the
8 Court must consider. But it's not end all/be all. And if the
9 defendant is found not to have withdrawn the conduct, he,
10 therefore, is not entitled to a two-level decrease.

11 There are other factors the Court can consider. Some
12 of the ones that are listed under application note one do apply
13 to Mr. Brown. One is truthfully admitting the conduct
14 comprising the offense of conviction and truthfully admitting
15 or not falsely denying any additional relevant conduct with
16 which the defendant is accountable.

17 As Mr. Clancy mentioned, when he laid out the facts
18 supporting the plea here today, when my client was approached
19 by law enforcement officers, he didn't deny anything. He
20 agreed that he committed the conduct.

21 Now, there was mention made that he threatened Barack
22 Obama, and then he withdrew that. The context of that is he
23 withdraw it because he's no longer president. And he was asked
24 well, what if Mr. Trump is surpassed by another individual and
25 he becomes President. He indicated he would withdraw the

1 threat against Mr. Trump and probably bring a threat against
2 the new president.

3 So I mean, it's criminal activity, of course, but it
4 also doesn't show any deep malice within the defendant's heart
5 against a particular individual, like Donald Trump and Barack
6 Obama, who, I think we can all agree, are two totally different
7 individuals with different personalities.

8 Another factor that somewhat applies is voluntary
9 assistance to authorities in recovery of the fruits and
10 instrumentalities of the offense. Not so much present here,
11 but with my client's conduct when he was questioned and readily
12 admitting he didn't try to hide anything. And I would glean
13 from his behavior in his admissions that he would have turned
14 over whatever other evidence there might be, had he had it in
15 his cell or anywhere else.

16 So like I mentioned, Your Honor, he, on March 29,
17 signed a plea agreement, and we were ready to proceed with the
18 plea. When that plea agreement was rejected, he maintained
19 that he will still plead guilty. He got charged with conduct
20 down in Virginia. He pleaded guilty to it. He's already been
21 sentenced on it. So he took responsibility for that. He's now
22 facing charges in New York. These are all things that occurred
23 since he's been in prison.

24 And we don't know what's going to happen with that
25 case in Buffalo, New York. There is an indictment. There is

1 some factual data about it. But that's a case for another day.

2 But in terms of acceptance of responsibility, I do
3 believe that the defendant has demonstrated by pleading guilty
4 here today, by signing the plea agreement, by accepting
5 responsibility for what he did down in Virginia, and readily
6 cooperating with authorities, the fact that he did not withdraw
7 from criminal conduct is not the deciding factor.

8 I mean, there are plenty of cases in the Middle
9 District, not the same as my client's -- there is not that many
10 of those types of cases out there. But there is cases in the
11 Middle District.

12 Judge McClure, in a case, United States versus
13 Christian Alander, 4:CR-01-385, 2002, the defendant was not
14 supposedly eligible for acceptance; he used marijuana and
15 traveled outside of the district, in violation of his
16 conditions, and yet, he received a reduction for acceptance of
17 responsibility from Judge McClure.

18 Again, in 2004, Judge McClure gave a defendant an
19 acceptance of responsibility credit in the United States versus
20 Dade, D-A-D-E, 4:CR-01-198, despite his revocation of pretrial
21 release for drug use.

22 More recently, in 2012, Judge Jones, in United States
23 versus Johnson, 4:10-CR-259, the defendant received a two-level
24 reduction, even though the pre-sentence report denied
25 acceptance and the Government opposed acceptance.

1 And then in 2005, Judge Jones, in another case, the
2 United States versus Robbins, R-O-B-B-I-N-S, 4:CR-03-346, also
3 gave the defendant acceptance of responsibility credit, even
4 though he used cocaine while on release and he failed to report
5 to the U.S. Marshal as directed.

6 So as I mentioned earlier and the commentary brings
7 forth, this Court is in a unique position to make a decision
8 about whether Mr. Brown, considering all of these factors, has
9 accepted responsibility for the activity that he engaged in
10 that puts him before this Court today.

11 Despite the behavior of my client while in prison and
12 the criminal charges that he has incurred, as he sits before
13 you today, he's accepting full responsibility for what he did.
14 He is admitting it and has admitted it from the beginning. And
15 I would ask the Court to consider giving him a two-level
16 decrease for acceptance of responsibility.

17 THE COURT: Very good, sir. Thank you.

18 Mr. Clancy, rebuttal.

19 MR. CLANCY: Your Honor, thank you. With respect to
20 the victim-related adjustments, I think Mr. Lord's questions
21 about why the Sentencing Commission did what it did are
22 answered by the guidelines themselves. The case he refers to
23 dealt with a different version of the guidelines. The
24 victim-related enhancement is now different. It does not have
25 a separate section for a threat against the President.

1 And I think what the Commission did was left the
2 answer to the victim-related adjustment in section (3)(A).
3 This is clearly a case in which both elements of (3)(A) are
4 met, one and two. And the offense is one, that is against the
5 person, from chapter two, part A, and the enhancement is
6 clearly applicable. There is no reason for the Court not to
7 impose it.

8 With respect to the acceptance of responsibility
9 argument, there are several factors for the Court to consider,
10 and the Court has great discretion in this regard. Two of
11 those factors particularly applicable to Mr. Brown are
12 voluntary termination or withdrawal from criminal conduct and
13 post-offense rehabilitative efforts.

14 And Mr. Brown not only engaged in criminal conduct but
15 engaged in the same kind of criminal conduct for which he was
16 charged in this district, for which he was charged and
17 convicted in New York before this offense, and now which he has
18 been charged with in New York again.

19 So from a cessation of criminal conduct perspective
20 and a post-conviction or post-arrest rehabilitative effort, he
21 has failed because of his own conduct.

22 Mr. Lord came up with a couple of cases where
23 acceptance of responsibility was granted despite those things.
24 I would venture to say that the list of cases in which judges
25 of this court have denied acceptance of responsibility in this

1 situation is much longer. I think every judge of this court
2 has had cases where post-arrest criminal conduct has led to the
3 denial of acceptance of responsibility, and the Third Circuit
4 has approved of that exercise of discretion with respect to
5 post-arrest criminal conduct.

6 In a conversation that I had with Mr. Brown directly,
7 with Mr. Lord present, after my office rejected the plea
8 agreement, I said to him directly, all of the things that are
9 happening are happening because of your conduct. And I think
10 it is his conduct, especially during the period of time when we
11 were trying to negotiate a plea agreement for his benefit, his
12 conduct in threatening that judge and the judge's family in New
13 York and the President and the Secret Service agent, while we
14 were trying to work out a resolution that would benefit him,
15 indicates that he is not worthy of acceptance of responsibility
16 as contemplated by guidelines.

17 So the Government would request that the Court
18 exercise its discretion to decline to give him acceptance of
19 responsibility credit. Thank you.

20 THE COURT: Very good, sir. Thank you.

21 Mr. Lord, anything further on either of those
22 objections?

23 MR. LORD: No, Your Honor.

24 THE COURT: Mr. Vought and Ms. Caras, would you come
25 up for just a moment, please? Put the white noise on.

1 (The following occurred at sidebar between Court and
2 probation officer and law clerk:)

3 THE COURT: All right. Counsel, thank you very much.
4 I'm going to overrule the objection as to the official victim
5 enhancement applied pursuant to United States Sentencing
6 Guideline 3A1.2. United States Sentencing Guideline 3A1.2(b)
7 increases the offense level by six levels if the victim was a
8 government officer or employee, the offense of conviction is
9 motivated by such status and the applicable chapter two
10 guideline is from chapter two, part A.

11 Those are the circumstances that this Court confronts
12 here. Mr. Brown threatened to kill the President of the United
13 States, and the applicable chapter two guideline is from
14 chapter two, part A.

15 For the record, I will advise counsel that I'm looking
16 specifically at two cases here that inform the Court's
17 thinking. The first case is entitled United States against
18 Cousins -- for the reporter, C-O-U-S-I-N-S -- which is found,
19 Counsel, at 469 F.3d, page 572, specifically at page 575. It's
20 a decision of the United States Court of Appeals for the Sixth
21 Circuit, a case from 2006. So there Section 3A1.2(a) applied
22 threatening the President and the President's family.

23 Another case that I uncovered is entitled United
24 States against Dudley, D-U-D-L-E-Y, found at 463 F.3d, page
25 1,221, specifically page 1,227, a decision of the United States

1 Court of Appeals for the Eleventh Circuit from 2006, as well.
2 That applied Section 3A1.2(b) for sending death threats to a
3 federal judge.

4 I'm also going to overrule the objection as to whether
5 Mr. Brown warrants a two-level decrease for acceptance of
6 responsibility pursuant to United States Sentencing Guideline
7 3E1.1. United States Sentencing Guideline 3E1.1(a) provides
8 that a district court may grant a two-level reduction in
9 offense level, quote, if the defendant clearly demonstrates
10 acceptance of responsibility for his offense, end quote. And
11 the defendant bears the burden to show by a preponderance of
12 the evidence that such a reduction is appropriate.

13 Counsel, I am referencing for that proposition United
14 States against Boone, B-O-O-N-E, found at 279 F.3d, page 163, a
15 decision from our Court of Appeals from 2002.

16 Given the circumstances of this case, I cannot
17 conclude that Mr. Brown has met that burden to clearly
18 demonstrate acceptance of responsibility.

19 Since he was indicted on the instant charge in August
20 of 2018, Mr. Brown has had four incidents of misconduct for
21 behavior similar in nature to the instant offense. For
22 example, on January 27, 2019, during pretrial detention he
23 wrote quote, I will kill Trump, end quote, on his cell walls
24 with his own feces.

25 On May 7, 2019, he was indicted in the United States

1 District Court for the Western District of New York and charged
2 with making threats against the President, retaliating against
3 a United States judge, the family of a United States judge and
4 a Secret Service agent and mail threatening communication
5 containing a threat to injure the President.

6 These acts are inconsistent with acceptance of
7 responsibility that's contemplated, I believe, by United States
8 Sentencing Guideline 3E1.1.

9 However, I note that by pleading guilty today,
10 Mr. Brown has evidenced some willingness to accept
11 responsibility for his actions, and consequently, his plea does
12 relieve the burden of the Government of the burden of proof at
13 the time of trial. So rather than applying a two-level
14 decrease under United States Sentencing Guidelines 3E1.1, this
15 Court will consider evidence of Mr. Brown's acceptance of
16 responsibility as a mitigating factor when determining his
17 sentence.

18 So having resolved all objections to the modified
19 pre-sentence report, this defendant has a criminal history
20 category of six, he has an offense level of 18, his guideline
21 range of imprisonment is 57 to 60 months.

22 I will state for the record that there are no motions
23 for departure.

24 Mr. Lord, am I correct in making that statement?

25 MR. LORD: Yes, Your Honor.

1 THE COURT: And you agree, Mr. Clancy?

2 MR. CLANCY: I agree.

3 THE COURT: Accordingly then, this Court will adopt
4 both the factual findings, together with the guideline
5 calculation in the pre-sentence report in their entirety.

6 As I noted a moment ago, the criminal history for
7 Mr. Brown is six. His offense level is 18. The guideline
8 range of imprisonment is 57 to 60 months.

9 Mr. Vought, do you agree that that calculation is
10 correct as stated by the Court?

11 PROBATION OFFICER VOUGHT: I do, Your Honor.

12 THE COURT: All right.

13 Mr. Lord, what would you care to say this morning on
14 behalf of Mr. Brown?

15 MR. LORD: Yes, Your Honor. Thank you very much. I'm
16 going to make a few comments, Your Honor. I will note that my
17 client's sister, Kristin Allen, is here and I'm going to ask
18 her to come forward at one point and stand at the podium and
19 read a letter she wrote, and I'm going to read something that
20 Gloria Brown, my client's mother, sent to me, as she is shy,
21 and I will just read that I note. And I know Mr. Brown wants
22 to address the Court, as well.

23 THE COURT: That's fine. Go right ahead.

24 MR. LORD: So as the Court knows, this case has been
25 around for a couple of years. I got involved in it when I took

1 on the position of assistant federal public defender in
2 December. And I met Mr. Brown for the first time in person
3 when he was in a cell at the Columbia County Prison. Things
4 didn't go well there, and he got moved to Northern Neck.

5 After he got moved to Northern Neck, I was able to set
6 up phone conferences. I was also able to set up video
7 visitation, and I was able to communicate directly with
8 Mr. Brown, through video visitation. And on one occasion I
9 went to Harrisburg and I met with Mr. Clancy and I brought my
10 iPad in, and we video visited him together in his office in the
11 federal building.

12 There's a couple of things I want the Court to know
13 about as a result of my short experience with Mr. Brown.

14 I note the difference in his own personality comparing
15 today with when I first met him and the progress that he has
16 made throughout and the lack thereof.

17 He seemed nervous. He seemed fast paced. He wanted
18 to jump from one decision to the next without thinking it out.
19 And that's the way he presented himself to me throughout the
20 process early on in my representation.

21 When he got moved to Northern Neck, due to his own
22 behavior there, they took it upon themselves and felt it
23 necessary to isolate him. And when I say isolate him; they
24 took away his clothes, they took away his mattress, they took
25 away his sheets, they took away his pillow. He just had the

1 frame, the bed frame, and a, what they call, suicide smock,
2 which is like a vest with velcro. And that's it. That's the
3 way he spent much of his time there.

4 Five days a week he would be in there 24 hours a day.
5 Two days a week they would allow him to out to take a shower
6 and make a phone call. He was in a belly chain, which went
7 around his waist and his arms were held together. He was
8 allowed to ambulate. They did not keep chains on his feet
9 while he was in the cell.

10 At one point, and I saw this, as I had a video meeting
11 with him, they had what they call restraint gloves on him. And
12 on the video call they looked like tubular oven mitts, and they
13 were on both of his hands. He had the belly chain on. No
14 clothes. Just the suicide smock. And he wasn't even allowed
15 to have a chair in the room. He was bent over on the phone
16 trying to hold the phone with the gloves on and talk to me for
17 our attorney/client conference.

18 He endured all that for a long period of time, at
19 least 30 days with the gloves. And when he finally -- I was
20 telling Mr. Clancy about this. When he finally started
21 receiving regular medication, which he took -- and he tells me
22 he's on ten milligrams of Olanzapine twice a day and
23 300 milligrams of lithium, twice a day, and that's been going
24 on for about a month, maybe a little bit longer than that, I
25 have noted a change in his personality and his countenance.

1 And I found out last night, when I met with him in the
2 Lycoming County Prison, that he had been taking this
3 medication. In the past he had been prescribed medication for
4 his mental disorders, but he sometimes wouldn't take them or he
5 would only take part of the dosage. As a result, I really
6 think it has an impact of his regular usage of those two drugs,
7 that he's a different man today.

8 When I met with him last night, he seemed calm and at
9 peace. He went through an enduring journey. Yesterday at 1:30
10 in the morning he was awakened, left for Pennsylvania for a van
11 at 5:30 a.m. and made various stops along the way. And I
12 encountered him last night, and he had been up for quite a
13 while, and he still seemed peaceful and calm and was allowed to
14 move around the prison and obeyed the orders of the officer
15 when we were finished with our attorney/client conference. I
16 thought there was a remarkable change that happened.

17 I believe the change occurred before yesterday. I
18 believe when Mr. Clancy and I met with him for the video
19 presentation in his office, I noted the change in him. I
20 didn't know he had been prescribed certain drugs and he was
21 taking them on a regular basis.

22 So I might say I'm quite proud of the way he has
23 adapted and changed. And I think that's something the Court
24 can consider in terms of the factors under 18 U.S.C., Section
25 3553 in determining what the best sentence is in this case. He

1 obviously needs a lot of help. He needs to take his
2 medications, and he needs to address his behavior through the
3 use of medications and through more therapy. He had been
4 getting therapy when he was sent out for the psychological
5 evaluations in Springfield, and it was noted in the evaluation
6 that it had some effect to the positive.

7 So I want the Court to seriously consider what I have
8 said here today, and I want the Court to consider the
9 statements that my client's sister is going to make, and I'll
10 state on behalf of Gloria Brown, and then I'll give my client
11 the floor to address the Court.

12 THE COURT: Go right ahead.

13 MR. LORD: I think the next witness I'll call, Your
14 Honor, is Kristin Allen. Kristin, if you could come forward,
15 with the Court's permission, and stand at the podium and just
16 read to the judge what you want to say. Introduce yourself and
17 your relationship to Mr. Brown.

18 THE WITNESS: Your Honor, my name is Kristin Allen.
19 I'm Jared's older sister. Judge Brann, eight years ago on
20 yesterday's date, I attended Jared's eighth grade moving-up day
21 ceremony. Both of my parents had to work, as they usually did,
22 but I was still able to attend. He received his certificate
23 and I wondered where he would be ten years later.

24 Little did I know that in those ten years I would be
25 writing you this letter. I didn't know that he would spend

1 both his 18th and his 21st birthdays locked up. I didn't know
2 he would miss my wedding. I didn't know that while writing
3 this I would struggle to find recent memories of him that
4 didn't involve handcuffs or a glass plating between us.

5 For me, he is still a chubby little kid who wanted to
6 hang out in my bedroom. He's still a dirty little boy playing
7 at the playground near our house, his whining and fighting
8 because he wants five more minutes in the pool before we had to
9 go home. I also know that he's here today because of the
10 things that he has done and the choices that he has made.

11 I don't believe he's ever meant to hurt anyone. In
12 fact, I can't recall him ever actually hurting someone. His
13 words and the choices he has made reflect poorly on the person
14 that he is. I understand that there must be consequences for
15 his actions. But he isn't just a statistic in a jail cell.
16 He's a kid, as grown up as he may be, that needs love and
17 attention and the right amount of effort.

18 I hope that I am able to give him a fresh start when
19 he rejoins us. I want to put in the time and effort that it
20 takes to keep him on the right path, no matter what. He has
21 had a difficult road and a difficult road ahead, and I know
22 he's more than this. I drove 200 miles to come here today to
23 tell you that someone is here and someone is waiting for him
24 when he's ready to come home. Life has so much more to offer
25 than what he has seen, and I don't want him to miss another

1 moment.

2 Thank you.

3 THE COURT: Thank you very much.

4 MR. LORD: Thank you. Your Honor, Gloria Brown is in
5 the courtroom today. She's my client's mother. She sent me an
6 e-mail and asked me just to read it to the Court.

7 THE COURT: Go right ahead.

8 MR. LORD: It says, Jared was a kind of an introverted
9 child. He was shy. Didn't like being in crowds. He didn't
10 want to join clubs. He listened to me most of the time. I
11 think his friends were a bad influence on him. He was a
12 follower. And she wanted you to know that he was diagnosed
13 with ADHD when he was in kindergarten. And she is here today
14 for him.

15 THE COURT: Good. Thank you very much. Anything
16 further, Mr. Lord, before I have allocution from Mr. Brown?

17 MR. LORD: No, Your Honor.

18 THE COURT: Thank you.

19 Mr. Brown, you now have the right of allocution, which
20 is the right to address this Court yourself regarding what you
21 believe I should consider in imposing a sentence today, and for
22 that matter to request a specific sentence. Mr. Brown, you
23 don't have to speak to me. If you would like to speak to me
24 directly, you may do so. Alternatively, if you have a
25 statement or remarks that you would like to read to me or have

1 Mr. Lord read to me in your stead, you may do so at this time.

2 THE DEFENDANT: I just have something quick. I just
3 want to let you know that when I made the threats, I was
4 hopeless and hopeless about myself. I didn't know where to go
5 when I got out. I was scared. Besides, I know I committed a
6 crime. And I'm sorry. That's it, Your Honor.

7 THE COURT: Thank you. Thank you for speaking to me.

8 Mr. Clancy, what is the Government's position with the
9 Court's disposition of this case today?

10 MR. CLANCY: Your Honor, the Government believes, as
11 the Court knows, that the guidelines calculations are
12 appropriate, and the Court has before it a correctly-calculated
13 range of 57 to 60 months.

14 This, I think, is a difficult case. It is clear to
15 all of us that Mr. Brown has significant psychological
16 challenges. From my first contact with him in this case until
17 now, I have seen significant improvement. When the first
18 psychological exam was done in this case, it was recommended
19 that he undergo dialectical behavioral therapy. That was done.
20 And the belief, at the conclusion of that round of therapy, was
21 that he had made progress.

22 But he very quickly slipped into his old bad behavior.
23 And that ended up with the problem Mr. Lord referred to at
24 Columbia County Prison. It landed him in Northern Neck,
25 outside of Richmond, Virginia, where he encountered other

1 problems and actually incurred a charge, a criminal charge
2 there, for making a false report. And he pled guilty to that
3 and was sentenced.

4 It was extraordinarily concerning to the Government
5 that during the time we were trying to negotiate a resolution
6 to his case, he found it appropriate to make more threats.
7 That is, as the Court knows, the main reason the Government
8 feels that he should not get credits for acceptance of
9 responsibility. It's signaled to the Government that Mr. Brown
10 was still engaging in the same kind of serious criminal conduct
11 that brought him here in the first place.

12 When I had that video conference with Mr. Brown and
13 Mr. Lord in my office, as Mr. Lord said, I, too, noticed a
14 change. He was coherent. He was reasonable. We had a short
15 discussion about the possible progress of the case. We had a
16 discussion about what might happen at a trial. He was lucid.
17 And he told us that he would do his best to conduct himself
18 with appropriate behavior from that point on.

19 And it appears, from everything I know, that he has
20 done that. From the time we had that video conference until
21 now, he was released from restricted housing in Northern Neck.
22 I know of no incidents whatsoever from that point until now.
23 So it is clear -- it appears clear to me, to the Government,
24 that he has the ability to behave appropriately.

25 At the same time, his inappropriate behavior is most

1 serious. Making threats against the President of the United
2 States, the highest government officer in our government, is a
3 most serious matter. And I believe he knows it. He has had
4 incrementally more severe punishments for engaging in that
5 behavior.

6 When he was first prosecuted in the Western District
7 of New York, there was an agreed-upon sentence of 15 months. A
8 bit of a gift to Mr. Brown, who I think had a much higher
9 guideline range at that time.

10 He was back in front of the Western District of New
11 York court on a supervised release revocation for the same kind
12 of conduct. And an incrementally more severe sentence of 24
13 months was imposed. That apparently did not teach Mr. Brown,
14 through incarceration, the error of his ways.

15 The Court now has before it a 57 to 60 month guideline
16 range. The Government believes that a sentence within that
17 range would be appropriate in this case. But at the same time
18 the Government could well see the Court offering Mr. Brown a
19 downward variance to some small degree.

20 But whatever sentence the Court metes out in this case
21 must send a clear message to Mr. Brown that he has to stop this
22 kind of criminal behavior, and it also must send a message to
23 anyone else who would ordain to issue a threat against the life
24 of the President of the United States, so that they might see
25 how they will be treated by the federal judicial system.

1 So of course, the Government leaves it to the Court to
2 fashion an appropriate sentence. I do believe the guideline
3 range is appropriate. A sentence in that range would be
4 appropriate. But I do well see how the Court might want to
5 give Mr. Brown the benefit of the variance.

6 Thank you, Your Honor.

7 THE COURT: Very good, sir. Thank you. Are there any
8 other matters regarding the pre-sentence report itself that
9 should be resolved prior to the imposition of sentence?
10 Mr. Lord?

11 MR. LORD: No, Your Honor.

12 THE COURT: Mr. Clancy?

13 MR. CLANCY: No, Your Honor.

14 THE COURT: Are there any other matters, Mr. Brown,
15 that you would care to raise with the Court before I impose
16 sentence today?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Very well. The sentence then that I'm
19 about to impose complies with the purposes set forth at Title
20 18 of the United States Code at Section 3553(a)(2). It
21 reflects the seriousness of this offense. It promotes respect
22 for the law. It provides just punishment for the offense. It
23 affords adequate deterrence to criminal conduct and protects
24 the public from further crimes of this defendant and provides
25 Mr. Brown with any needed educational or vocational training,

1 medical care or other correctional treatment in the most
2 effective manner.

3 The sentence also reflects this Court's full
4 consideration of all factors relevant to the sentencing
5 determination including the nature and the circumstances of the
6 offense, the history and characteristics of this defendant, the
7 kind of sentences available, the advisory sentence prescribed
8 by the United States Sentencing Commission Guidelines Manual,
9 the need to avoid unwarranted sentencing disparities among
10 defendants with similar records who have been found guilty of
11 similar conduct, and the need to provide restitution to any
12 victims of the offense.

13 Regarding the nature and the circumstances of the
14 offense; Jared Marc Brown was an inmate at the United States
15 Prison in Allenwood serving a supervised release revocation
16 sentence imposed in the Western District of New York related to
17 a conviction for making a threat to kill the President of the
18 United States in 2015.

19 On June 14, 2017, Mr. Brown sent an e-mail within the
20 prison system stating his intent to blow up the prison and kill
21 both the current President of the United States, Donald J.
22 Trump, and former president, Barack H. Obama.

23 A search of Mr. Brown's cell revealed a note in which
24 Mr. Brown stated that he would kill Presidents Trump and Obama
25 as well as the Secret Service agent involved in his New York

1 case. The defendant also had the makings of a knife in his
2 cell.

3 The matter was referred to the Secret Service through
4 the Federal Bureau of Investigation. Mr. Brown was interviewed
5 by Secret Service agents and admitted to making the threats.
6 He backed off the threat against President Obama because
7 President Obama was no longer the president of the United
8 States. Mr. Brown would not retract the threat made against
9 President Trump or the Secret Service agent.

10 Regarding the history and characteristics of the
11 defendant; it appears that Mr. Brown has a history of drug use
12 and mental illness, including official diagnoses of antisocial
13 personality mood disorder, intellectual disability and has
14 disclosed that he has, in the past, had thoughts of suicide.

15 While incarcerated, including amongst his violations,
16 were instances of tattooing or self mutilation. However,
17 Mr. Brown's prison conduct record also shows that he committed
18 numerous violations involving harm to others, including assault
19 and destroying property.

20 Mr. Brown's conduct extends beyond prison walls.
21 Mr. Brown's extensive criminal history includes convictions for
22 harassment and giving false reports. Indeed, his criminal
23 history category of six is the highest category recognized by
24 the guidelines.

25 This is also not the first time that Mr. Brown has

1 committed a crime that brings him before this Court today. He
2 has previously made threats to kill others, including the
3 President of the United States. In fact, Mr. Brown has charges
4 currently pending against him in what I have noted as the
5 Northern District of New York for similar conduct.

6 Given this pattern of behavior, there is a need to
7 help Mr. Brown acquire respect for the law, to afford him
8 adequate deterrence, because he continues to re-offend, to
9 protect the public from further crimes, to reflect the
10 seriousness of the offense he has committed, and to provide
11 just punishment for it.

12 Regarding the kinds of sentences available for the
13 Court, I note that the maximum penalty for the offense of
14 threatening the life of the President of the United States, in
15 violation of Title 18 of the United States Code at Section 871
16 is five years of imprisonment, a fine of \$250,000, and three
17 years of supervised release.

18 Regarding the advisory sentence prescribed by the
19 United States Sentencing Commission's Guidelines Manual, I have
20 already noted that the defendant's criminal history category
21 here is six, his offense level is 18, and the guideline range
22 of imprisonment is between 57 and 60 months.

23 Imposing a guideline sentence can help avoid
24 unwarranted sentencing disparities among defendants with
25 similar records who have been found guilty of similar conduct.

1 I note, however, that the sentencing guidelines are merely
2 advisory.

3 After balancing the factors of Section 3553(a) and
4 given this Court's full consideration of each of those factors
5 in the instant case, the Court finds that a sentence about to
6 be imposed to be reasonable, appropriate and not greater than
7 necessary to meet sentencing objectives, and that in this case
8 a downward variance is warranted.

9 The Court will impose the following sentence.

10 Mr. Brown, are you able to stand up? Please rise.

11 Pursuant to the Sentencing Reform Act of 1984, it is
12 the judgment the Court that the defendant, Jared Marc Brown, is
13 hereby committed to the custody of the United States Bureau of
14 Prisons to be imprisoned for a term of 42 months.

15 The Court finds that this defendant does not have the
16 ability to pay a fine. It is ordered, however, that this
17 defendant shall pay to the clerk of the United States District
18 Court a special assessment of \$100 due immediately.

19 As this defendant has a previously-imposed term of
20 supervised release, and since terms of supervised release must
21 run concurrently, pursuant to Title 18 of the United States
22 Code at Section 3624(e), the Court does not impose a further
23 term of supervised release.

24 This defendant shall cooperate in the collection of a
25 DNA sample.

1 Mr. Brown, it is my determination that the sentence
2 imposed today is sufficient but not greater than necessary to
3 comply with the purposes set forth at Title 18 of the United
4 States Code at Section 3553(a)(2). I will note that I have
5 considered all seven factors as set forth at Title 18 of the
6 United States Code at Section 3553(a).

7 Recognizing that the guidelines and policy statements
8 and amendments to the same, as referenced at Title 18 of the
9 United States Code at Section 3553(a)(4) and (5), are advisory
10 only, the Court finds their application in this case reasonable
11 and appropriate under the totality of the circumstances.

12 Mr. Brown, I advise you now of your right to appeal
13 your conviction and sentence to the United States Court of
14 Appeals for the Third Circuit. With few exceptions, any notice
15 of appeal must be filed within 14 days. If you are unable to
16 pay the costs of an appeal, you may apply for leave to appeal
17 in forma pauperis, which means that if approved, counsel will
18 be appointed for you, and you will not be required to pay any
19 costs.

20 Mr. Lord, is there a request for a specific prison
21 designation for Mr. Brown?

22 MR. LORD: Yes. I thought about that, Your Honor. I
23 believe he's going up to New York. His family is up in New
24 York. So he would prefer to be in a facility that is
25 appropriate for him that is closest to his family in New York.

1 THE COURT: His family is Lockport. Is that Niagara
2 County, New York?

3 MR. LORD: I believe it is. Yes, it is.

4 THE COURT: Mr. Brown, I will make that request of the
5 Bureau of Prisons as a place of incarceration for you. They
6 will take into account my recommendation. It's a matter,
7 frankly, of space availability as much as anything else. But I
8 will certainly make that recommendation to the Bureau of
9 Prisons in my dispositional report that will be issued before
10 the day is out today.

11 Mr. Clancy, this was a one-count indictment, without
12 any other counts to dismiss. Am I right in saying that?

13 MR. CLANCY: That's correct, Your Honor.

14 THE COURT: Very good. Is there anything else,
15 Mr. Clancy, on behalf of the Government with regard to
16 Mr. Brown's case?

17 MR. CLANCY: No, Your Honor. Thank you.

18 THE COURT: You're welcome.

19 Mr. Lord, anything else regarding your man?

20 MR. LORD: No, Your Honor. Thank you.

21 THE COURT: So Mr. Brown, let me make two
22 observations. Number one -- or three maybe. One, your family
23 is here and they care about you. I think they love you. That
24 is not always the case in these sentencing hearings. And I do
25 this day in and day out. So frequently the defendant appears

1 and there is no one else; I mean other than the court staff,
2 defense counsel, the prosecutor, the marshals, probation
3 office, the court security officer and me and the defendant, of
4 course. But your family is here. They care about you, and I
5 think we would like you to return to them at some point.

6 Right at the moment you seem to be serving in prison
7 on maybe almost an endless series of prison on the installment
8 plan. You're imprisoned. You violate. You're back in prison.
9 You misbehave. At some point I think you've got to decide that
10 may not be for you. Although, maybe it is. I don't know. I
11 don't think so. I think your family would like you to return
12 to them.

13 Second, you've got to stop making these threats. It's
14 got to end. Apparently there are charges pending in one of my
15 sister courts in New York, whether it's Northern or Western, I
16 don't know. We'll figure that out. You've got to stop making
17 threats. Just cut it out. It's not appropriate. You can't
18 threaten the President. You can't threaten federal officials.
19 You can't threaten federal judges. You can't threaten Secret
20 Service agents, FBI agents, prosecutors. It's against the law.
21 It should be obvious.

22 Third, if you are, in fact, taking some medication
23 that will stabilize you, you should keep at it, I think. I
24 have no degrees in pharmacology, but I have practiced law and
25 been a judge for almost 30 years, and my observation, as a

1 non-expert, is that often is helpful. And apparently it is in
2 your case.

3 So again, I'm not diagnosing you, and I'm not
4 prescribing the medication. But I would strongly urge you to
5 keep at it, and I think you may be on the road to some level of
6 recovery, if you do so.

7 Stop making these threats. You are going to go off to
8 the Western District of New York and somebody is going to chat
9 with you up there and give you the same guidance.

10 I wish you good luck.

11 Anything else, Counsel?

12 MR. CLANCY: No, Your Honor. Thank you.

13 MR. LORD: No, Your Honor.

14 THE COURT: Court is adjourned.

15 THE COURTROOM DEPUTY: All rise.

16 (11:45 a.m., court adjourned.)
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REPORTER'S CERTIFICATE

I, Lori A. Fausnaught, RMR, CRR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

s/Lori A. Fausnaught, RMR, CRR

Lori A. Fausnaught, RMR, CRR
Official Court Reporter

REPORTED BY:

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